

Appl. No. : 09/630,931
Filed : August 2, 2000

Prior to the March 15, 2004 deadline for paying the issue fee, the undersigned performed a search of the file history of instant patent application to ensure that all of the references submitted in connection with this application had been considered by the Examiner. In so doing, the undersigned discovered that the file history contained no indication that the Examiner had considered the references that were included in the IDS submitted on August 21, 2001. A check of the PAIR system further indicated that the IDS submitted on August 21, 2001 was not entered into the file. On March 12, 2004, the undersigned contacted Examiner Rao by telephone to confirm that the IDS submitted on August 21, 2001 (and indicated as received by the PTO on August 23, 2001) had not been entered into the file. Examiner Rao verified that this IDS was not present in the file.

In view of the above circumstances, Applicant submits with this present Request for Continued Examination the IDS submitted on August 21, 2001 (including form PTO-1449, and copies of the 60 listed references). Additionally, the return postcard showing the PTO's receipt of this IDS on August 23, 2001 is provided herewith.

ARGUMENT IN FAVOR OF PATENTABILITY OF THE CLAIMS

Claims 7-20 are currently allowed in the instant application. Applicants respectfully submit that each of these claims are patentable in view of the 60 resubmitted references because none of these references teach or suggest methods of identifying a regulatory element capable of directing or regulating transcription, wherein the regulatory element is operably linked to a nucleic acid encoding a cytoplasmic form of chitobiase. As such, the Examiner's reason for allowance provided in the Notice of Allowability remains accurate.

ALTERNATIVE TREATMENT

In the event that this Request for Continued Examination is denied, please treat this document as a Petition for Withdrawal from Issue under 37 C.F.R. § 1.313(a).

REFUND OF FEES

In view of the above facts, Applicants specifically request a refund of the fees associated with the filing of this Request for Continued Examination or the Petition for Withdrawal from

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Issue under 37 C.F.R. § 3.313(a) in the event that this Request for Continued Examination is treated as such.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 15, 2004

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